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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 50

HARRY PYLE,

Petitioner,

vs.

STATE OF KANSAS AND MILTON F. AMRINE, WARDEN, KANSAS STATE PENITENTIARY,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF FOR PETITIONER.

JOSEPH P. TUMULTY, JR.,
Counsel for Petitioner.

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BRIEF FOR PETITIONER.

Opinions Below.

The Supreme Court of Kansas dismissed petitioner's original application for writ of *habeas corpus* without delivering an opinion, and also denied without opinion his petition for rehearing.

Jurisdiction.

The case is here on writ of certiorari granted by this Court to review a judgment of the Supreme Court of Kan-

sas dismissing petitioner's original application for writ of *habeas corpus* (R. 29). The order dismissing the application was entered on December 11, 1941. On December 15, 1941, petitioner filed a petition for rehearing (R. 29), which was denied on February 4, 1942 (R. 30). The petition for writ of certiorari was filed March 20, 1942 (R. cover), and was granted April 27, 1942. The jurisdiction of this court rests upon Section 237 (b) of the Judicial Code, as amended (U. S. C. Tit. 28, Sec. 344 (b)).

Petitioner contends that the judgment under review was final and necessarily decided adversely to petitioner a substantial federal question which was properly presented by the record. Also that the petition for certiorari was filed in this Court within the time authorized by law. These questions are discussed hereinafter in the portion of this Brief devoted to argument.

Constitutional Provisions and Statutes Involved.

The relevant parts of the federal and Kansas constitutions and statutes and of the rules of the Supreme Court of Kansas, which are deemed to have an important bearing, are set forth in the Appendix.

Statement of the Case.

In 1935, an information was filed in the District Court of Stafford County, Kansas, charging petitioner with the crimes of murder and robbery (R. 19). He pleaded not guilty, was tried by a jury and convicted (R. 22-23). A motion for a new trial filed on his behalf was overruled and he was sentenced to imprisonment in the State penitentiary for life under his conviction of murder, and for a term of not less than 10 years nor more than 21 years under his conviction of robbery (R. 24-25). On appeal the judgment was affirmed by the Supreme Court of Kansas (R. 10), *State* v.

Pyle, 143 Kansas, 772, 57 Pacific (2d) 93, (decided May 9, 1936).[1]

On November 20, 1941,[2] petitioner acting in his own behalf filed an original application for writ of *habeas corpus* in the Supreme Court of Kansas. With the application were submitted: (1) a brief (R. 4-8); (2) an abstract (R. 8-12); (3) exhibits consisting of: (a) an affidavit of one Arthur Snyder, an attorney (R. 14-16); (b) a copy of an affidavit of one Truman Reynolds, verified by petitioner to be a true copy of the original (R. 16-17) and (c) a copy of a letter from one C. W. Slifer, an attorney, to petitioner, to which was appended a sworn statement by petitioner to the effect that said copy was a true copy of the original in his possession and that said C. W. Slifer was prosecuting attorney at the time of petitioner's trial and conviction (R. 17-19); and (4) an exhibit consisting of a certified copy of the Information, page from the Judge's Trial Docket, and page from the Jury Docket in the criminal case in the District Court of Stafford County in which petitioner was convicted of murder and robbery and sentenced (R. 19-29).

In connection with his application for writ of *habeas corpus*, petitioner also filed in the court below an affidavit for leave to proceed *in forma pauperis* (R. 3-4), and motions for the appointment of counsel to represent him (R. 12), for the issuance of a subpoena *duces tecum* to bring before the court the records in the trials in the District Court of Stafford County of one Merl Hudson and one Bert (Bud) Richardson (R. 12-13), for the production of the petitioner

[1] From the opinion it appears the jury was out from seven-fifteen p. m., May 18, 1935, to nine-thirty p.m., May 20, 1935. After the jury had deliberated for two days without reaching a verdict they were recalled by the trial court and given an instruction relative to reaching a verdict which the court below disapproved but held not reversible error because of failure by petitioner's attorney to make timely objection.

[2] The date of filing the original petition for writ of *habeas corpus* does not appear in the printed transcript of record but appears in the record on file in this Court in an abstract submitted by petitioner with his brief supporting his petition for writ of certiorari.

in court for the hearing on the application for the writ (R. 13), and for the issuance of subpoenas to bring before the court certain named witnesses "material in the defense of petitioner" (R. 13). Petitioner also filed an "affidavit for waiver", in compliance with a rule of the Supreme Court of Kansas, setting forth reasons for proceeding in the State Supreme Court instead of an inferior court of concurrent jurisdiction (R. 3).

The application, though somewhat ineptly phrased, clearly charged that petitioner's imprisonment was the result of a deprivation of rights guaranteed him by the Federal Constitution. His application sets out in substance the allegations among others, that his conviction was obtained by the presentation of testimony known to the State authorities to be perjured (R. 1-2), and also, taken together with the brief and abstract filed therewith, that these authorities deliberately, by threats and intimidation, suppressed testimony which would have been favorable to his defense (R. 2, 4-5, 5-6, 9, 9-10). Among the specific allegations are:

That one Truman Reynolds was coerced and threatened by the State to testify falsely against petitioner and that said testimony did harm to petitioner's defense (R. 5); that one Lacy Cunningham was threatened with prosecution if he did not testify for the State (R. 6); that testimony of one Roy Riley favorable to petitioner's defense was suppressed under threats and coercion by the State (R. 6, 9); and that Mrs. Roy Riley and one Mrs. Thelma Richardson, witnesses for the defense, were intimidated and their testimony suppressed (R. 9).

Also submitted was a verified copy of an affidavit of said Truman Reynolds dated December 9, 1940, containing the statement (R. 17):

> "I was forced to give perjured testimony against 'Harry Pyle' under threat by local authorities at St.

John, Kansas, and the Kansas State Police, of a penitentiary sentence for burglary if I did not testify against Mr. Pyle.

"Those statements that I made, against 'Harry Pyle' are entirely and thoroughly false.

"Mr. Pyle has never approached me at any time to commit or help to commit any unlawful act."

Petitioner also alleged that testimony inconsistent with evidence presented by the State at petitioner's trial, was presented by the State at the trial of one Merl Hudson (R. 11), which trial took place about 6 months after the affirmance of petitioner's conviction by the court below (R. 10), and asked that the records of this trial, and also of the trial of one Bert (Bud) Richardson, be subpoenaed (R. 12-13).

He further alleged (R. 2) that "he has resorted to every remedy available under Kansas law, to bring such records within such remedies of the State and that redress has been denied as timely appeal had expired when such records and evidence was recorded," and that "he is now being deprived or (sic) redress to show that his imprisonment was procured by want of due process of law."

The court below, on December 11, 1941, ordered the petition to be filed and docketed without costs, but declined to issue the writ (R. 29). A motion for reconsideration, on the ground that the writ was denied without a lawful hearing and without setting forth any lawful reason for the dismissal, was filed by petitioner on December 15, 1941 (R. 29-30). On February 4, 1942, the court below entered an order (R. 30) stating that "after due consideration by the court, it is ordered that said motion (for a rehearing) be denied."

Questions Presented.

1. Whether this Court has jurisdiction to review the judgment entered by the court below.

2. Whether petitioner's application for writ of *habeas corpus* alleged facts which if proven entitled him to release

from prison because he was held pursuant to a court judgment rendered in violation of rights guaranteed him by the Due Process clause of the Fourteenth Amendment of the Federal Constitution.

3. Whether the court below erred in refusing to afford petitioner an opportunity to prove the issues of fact controlling the constitutional validity of his detention.

ARGUMENT.

I.

The Jurisdiction of This Court.

A. The Judgment Sought to Be Reviewed is Final in Character.

The order entered by the court below on December 11, 1941, denied the application for the writ and dismissed the cause. It therefore disposed of all questions presented by the record. It is settled beyond debate that a judgment of the highest court of a state dismissing a petition for writ of *habeas corpus* is final in character. See *Holmes* v. *Jennison*, 14 Pet. 540, 563; *Bryant* v. *Zimmerman*, 278 U. S. 63, 70.

B. A Substantial Federal Question was Properly Presented in the Court Below.

The application for the writ bears evidence of having been prepared by a poorly educated person. Nonetheless, the application, brief and abstract, clearly presented the question whether the judgment under which petitioner is imprisoned was void because obtained without due process of law, contrary to the Fourteenth Amendment to the Federal Constitution. The application, while asserting that defendant had been denied due process of law guaranteed under the Constitution of the United States (R. 1), does not

refer specifically to the Fourteenth Amendment. But in his brief petitioner distinctly declares that his claim is grounded on the due process of law clause of the Fourteenth Amendment (R. 4). Under the Kansas law, the court below was authorized to consider the application and the supporting papers submitted with it. *Lee* v. *Prather*, 146 Kan. 513, 71 P. (2nd) 868. If, as here, the record as a whole shows, either expressly or by clear intendment, that the claim and ground therefor were brought to the attention of the state court with fair precision and in due time, the claim is to be regarded as having been adequately presented. *Bryant* v. *Zimmerman*, 278 U. S. 63, 67.

The contention that petitioner was deprived of his liberty in contravention of the requirement of due process is clearly one not lacking in substance. In *Mooney* v. *Holohan*, 294 U. S. 103, this Court said at page 67:

> "That requirement (i.e., of due process), in safeguarding the liberty of the citizen against deprivation through the action of the State, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions."

In Kansas, *habeas corpus* is recognized as affording a remedy for a person held in prison in violation of a right guaranteed by the Federal Constitution, *Cochran* v. *Kansas*, 316 U. S. 255, citing *In re Jarvis*, 66 Kan. 329. The writ is Kansas' "response to the requirements of *Mooney* v. *Holohan*, 299 U. S. 103, for the judicial correction of a wrong committed in the administration of criminal justice and resulting in the deprivation of life or liberty without due process." Per Frankfurter, J., in *Hysler* v. *Florida*, 315 U. S. 411.

It is submitted, therefore, that petitioner's application properly presented for consideration by the court below a substantial federal question, namely, whether petitioner's

incarceration is in violation of the Fourteenth Amendment of the Federal Constitution.

C. The Judgment Below Did Not Rest upon an Adequate Non-Federal Ground.

Petitioner's application for writ of *habeas corpus* was grounded *solely* on the Fourteenth Amendment to the Constitution of the United States. It contained no mention of any constitutional provision or statute of the state. Under the Kansas law, the court below was bound to issue the writ for sufficient cause shown. (Kan. Gen. Stat. (Corrick, 1935) Sec. 60-2203-04.) Whether or not sufficient cause was shown to state a cause of action under the due process clause of the Fourteenth Amendment is itself a federal question. *Smith* v. *O'Grady*, 312 U. S. 329; cf. *Cochran* v. *Kansas*, 316 U. S. 255.[3]

The court below, by its order of December 11, 1941 (R. 29) allowed the application for the writ to be filed and docketed, but denied the writ and dismissed the proceeding. The necessary effect of the order was to deny petitioner's claim, and that is enough. See *Bryant* v. *Zimmerman*, 278 U. S. 63, 67.

Since the record discloses that there was no non-federal question presented to the court below upon which its decision might have been based, it is submitted that no other conclusion is warranted except that the federal question presented was necessarily decided by that court.

D. The Petition for Writ of Certiorari was Filed in this Court Within the Time Authorized by Law.

The order denying petitioner's application for writ of *habeas corpus* was entered on December 11, 1941, which was

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[3] "It is therefore our duty to examine petitioner's allegations in order to determine whether they show that his imprisonment is the result of a deprivation of rights guaranteed him by the Federal Constitution." Black, J., in *Smith* v. *O'Grady*, 312 U. S. 329 at 332.

in the July term, 1941, of the court below. The petition for writ of certiorari was filed in this court on March 20, 1942, and therefore more than three months after the entry of the order. However, on December 15, 1941, at the July term, 1941 and within the time allowed by the rules of the court below[4] petitioner filed therein a petition for reconsideration, which was entertained and not disposed of until February 4, 1942. Under these circumstances, it is settled that the three months' limitation begins to run from the last-mentioned date. *Citizens Bank* v. *Opperman*, 249 U. S. 448; *Gypsy Oil Co.* v. *Escoe*, 275 U. S. 492; *U. S.* v. *Seminole Nation*, 299 U. S. 417; *Labor Board* v. *Mackay Co.*, 304 U. S. 333, 343.

II.

The Merits of the Case.

A. Petitioner's Application for Writ of Habeas Corpus Alleged Facts Which if Proven Entitled Him to Release from Prison Because he Was Held Pursuant to a Court Judgment Rendered in Violation of Rights Guaranteed Him by the Due Process Clause of the 14th Amendment of the Federal Constitution.

The federal question presented was based upon the contention in petitioner's application that his imprisonment was illegal under the Federal Constitution. In denying the writ the Kansas court necessarily held that petitioner's allegations—even if proven in their entirety—would not entitle him to *habeas corpus*. *Smith* v. *O'Grady*, 312 U. S. 329, 331. Cf. *Frank* v. *Mangum*, 237 U. S. 309, 332.

It therefore becomes the duty of this Court to examine petitioner's allegations to determine whether they show that his imprisonment is the result of a deprivation of rights guaranteed him by the Federal Constitution.

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[4] See Rule No. 16, quoted in the Appendix, at Page 17.

Supporting his general allegation that he had been denied due process of law (R. 1-2), petitioner in his application alleged that the verdict rendered against him was procured by evidence and testimony introduced by the State knowing same to be perjured (R. 2). Substantially similar allegations, variously worded, together with allegations that the State suppressed evidence favorable to petitioner by threats and coercion, were contained in his accompanying brief and abstract (R. 4, 4-5, 10). He also alleged that the State knowingly introduced evidence against him contrary to evidence introduced by the State in the trial of other persons charged with the same offense for which he was convicted (R. 1, 5, 8, 10-11).

Specifically, petitioner named one witness, Truman Reynolds, who he alleged testified falsely (R. 5) and in an accompanying affidavit set forth an alleged confession of perjury committed under inducements made by State authorities signed and sworn to by Reynolds in December, 1940 (R. 16-17). He named another witness, one Lacy Cunningham, whose testimony for the State he alleged was coerced under threat of prosecution (R. 6, 9). A third witness, Roy Riley, allegedly a material witness for the defense (R. 9), was alleged to have been prevented from testifying for the defense by threats and coercion (R. 6, 9). Suppression of testimony of Mrs. Roy Riley and Mrs. Thelma Richardson was also specifically alleged (R. 9).

If these things happened, they undermine and invalidate the judgment upon which petitioner's imprisonment rests. It is well settled that if, by fraud, collusion, trickery or subornation of perjury on the part of those representing the state, the trial of an accused person results in his conviction he has been denied due process of law. *Mooney* v. *Holohan*, 294 U. S. 103. As stated by this Court in *Hysler* v. *Florida*, 315 U. S. 411 at 413, the "guides for decision are clear. If a state, whether by the active conduct or the con-

nivance of the prosecution, obtains a conviction through the use of perjured testimony, it violates civilized standards for the trial of guilt or innocence and thereby deprives an accused of liberty without due process of law."

The application having been dismissed without the issuance of a writ or filing of a return, without preliminary hearing or a finding of facts by the court of first instance, these allegations stand uncontroverted.

The application thus presented to the court below the questions of fact whether petitioner's conviction had been obtained through the use of testimony known to the State to be perjured and by the suppression of favorable testimony by threats and coercion by the State.

Since the court denied the application and dismissed the cause without assigning any reasons for its action, it is not clear whether it decided the questions of fact against petitioner. If so, its decision cannot stand, since petitioner could not be denied the opportunity to prove the truth of his allegations if those allegations, if true, entitled him as a matter of law to release from restraint. A summary rejection without a hearing of allegations supported by a sworn statement and not denied by anyone, would raise serious questions of compliance with the Constitutional requirement of a fair trial. *Walker* v. *Johnston*, 312 U. S. 275; *In re Rosier*, U. S. C. A. for D. C., decided September 2, 1942. Cf. *Mooney* v. *Holohan, supra; Smith* v. *O'Grady, supra.*

But it might be contended that the incorporation by petitioner in his application, as an exhibit, of the record of his trial and conviction, showing that he was represented by counsel throughout and revealing on its face no irregularity in the trial, was in itself sufficient refutation of his charge that his conviction was procured by the knowing use of perjured testimony and the suppression of favorable evidence. Cf. *Cochran* v. *Kansas, supra.* However, peti-

tioner alleged that the testimony and evidence on which his claim of denial of due process was based was not "reported" until after the expiration of the time for appeal from the judgment of conviction. It also appears that Reynolds' recantation was made in December, 1940, more than 5 years after petitioner's trial. Furthermore, petitioner alleged that the transcript of the trial of Merl Hudson bears out his charge, and he sought to have this record brought before the court below. It appears that this trial occurred several months after the affirmance of petitioner's conviction by the court below. Under these conditions the record of petitioner's trial and conviction could afford no refutation of his specific charges. *Cochran* v. *Kansas*, *supra*.

It is submitted that it is a necessary conclusion that the court below did not pass upon the credibility of petitioner's allegations, but merely decided that these allegations, however fully proved, would not make out a denial of due process. If these allegations are true, petitioner is imprisoned under a judgment invalid because obtained in violation of procedural guarantees protected against State invasion under the Fourteenth Amendment. *Mooney* v. *Holohan*, supra. It is submitted that the application stated a cause of action.

B. The Court Below Erred in Refusing to Afford Petitioner an Opportunity to Prove the Issues of Fact Controlling the Constitutional Validity of His Detention.

Since petitioner's application set forth facts which, if true, would render his imprisonment void because of constitutional defects, it is submitted that the judgment of the Court below should be reversed and remanded.

It is not clear from the record that the court below has made any determination of facts. If it has, in the absence of any contradiction of the petitioner's allegations, and

without according petitioner a hearing and opportunity to submit his proofs, a serious question arises whether the state court has not itself been guilty of denying petitioner a right guaranteed him by the due process clause of the Fourteenth Amendment—a right which he claimed in the court below when he grounded his motion for reconsideration on the failure to accord him a lawful hearing (R. 30). As stated by Stephens, J. in *In re Rosier*, decided by the Court of Appeals for the District of Columbia on September 2, 1942:

> "The right of hearing under the due process clause includes the right of each party to a cause to introduce evidence in support of his claim or defense, to hear the evidence introduced against him, to test the same by cross-examination, the right that nothing shall be treated as evidence which is not introduced as such, and the right to make argument on both law and facts."

See also, *Powell* v. *Alabama*, 287 U. S. 45, 68; *Moore* v. *Dempsey*, 261 U. S. 86, 92.

Conclusion.

The judgment of the Supreme Court of Kansas should be reversed, and the case remanded to the said court, there to be proceeded with according to law.

Respectfully submitted,

JOSEPH P. TUMULTY, JR.,
Counsel for Petitioner.

October, 1942.

APPENDIX.

1. Federal Constitution.

The Fourteenth Amendment provides in part as follows:

• • • nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Constitution and Statutes of Kanass.

Writ of Habeas Corpus.

The Kansas Constitution contains the following provisions relating to the writ of habeas corpus:

Sec. 8 (Kansas Bill of Rights) Habeas corpus. The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

Article 3, Sec. 3 (Constitution of Kansas). Jurisdiction and terms. The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of the government and such other terms at such places as may be provided by law, and its jurisdiction shall be coextensive with the state.

L. 1909, c. 182, sec. 687, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2201:

Every person restrained of his liberty under any pretense whatever may prosecute a writ of *habeas corpus* to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.

L. 1909, c. 182, sec. 689, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2203:

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

First.—By whom the person in whose behalf the writ is applied for is restrained of his liberty and the place where,

naming all the parties, if they are known, or describing them if they are not known.

Second.—The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

Third.—If the restraint be alleged to be illegal, in what the illegality consists.

L. 1909, c. 182, sec. 690, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2204:

Writs of *habeas corpus* may be granted by any court of record in term time, or by a judge of any such court, either in term or vacation; and upon application the writ shall be granted without delay.

L. 1909, c. 182, sec. 696, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2210:

The return must be signed and verified by the person making it, who shall state:

First.—The authority or cause of restraint of the party in his custody.

Second.—If the authority be in writing, he shall return a copy and produce the original on the hearing.

Third.—If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party on the hearing, unless prevented by sickness or infirmity, which must be shown in the return.

L. 1909, c. 182, Sec. 697, Kan. Gen. Stat. (Corrick, 1935) sec. 60-2211:

* * * The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in case of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

L. 1909, c. 182, sec. 698, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2212:

The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.

L. 1909, c. 182, sec. 699, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2213:

No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired, in either of the cases following:

First.—Upon process issued by any court or judge of the United States, or where such court or judge has exclusive jurisdiction.

Second.—Upon any process issued on and final judgment of a court of competent jurisdiction.

Third.—For any contempt of any court, officer or body having authority to commit; but an order of commitment as for a contempt upon proceedings to enforce the remedy of a party is not included in any of the foregoing specifications.

Fourth.—Upon a warrant or commitment issued from the district court or any other court of competent jurisdiction upon an indictment or information.

L. 1909, c. 182, sec. 702, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2216:

The court or judge shall have power to require and compel the attendance of witnesses, and do all other acts necessary to determine the case.

L. 1909, c. 182, sec. 711, Kan. Gen. Stat. (Corrick, 1935), sec. 60-2225:

No deposit or security for costs shall be required of an applicant for a writ of *habeas corpus*.

3. Rule of the Supreme Court of Kansas.

Rule No. 16 of the Rules of the Supreme Court of Kansas as revised October 14, 1939 (printed in 143 Kansas Reports (1941) at page xi):

Post Decisions Motions.

Motions for Rehearing, etc. Motion for a rehearing or for a modification of the judgment, or for the reinstatement of a case that has been dismissed, may be filed within twenty days after the decision, a copy being furnished the opposing counsel. Unless by special order, no argument or brief will be allowed in support of such a motion except such as may be incorporated therein. The opposing party may at his option file a reply to the motion within five days after receiving a copy thereof.